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1 money damages. For the reasons stated below, the Court STAYS this action.

2 DISCUSSION

3 A. Standard of Review

4 A federal court must conduct a preliminary screening in any case in which a prisoner
5 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*
6 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss
7 any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or
8 seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.
9 § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*
10 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
12 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
13 the alleged violation was committed by a person acting under the color of state law. *See West v.*
14 *Atkins*, 487 U.S. 42, 48 (1988).

15 B. Analysis

16 Plaintiff seeks damages for his allegations of false arrest, an illegal search and seizure,
17 and municipal liability. The United States Supreme Court has held that to recover damages for
18 an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions
19 whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must
20 prove that the conviction or sentence has been reversed on direct appeal, expunged by executive
21 order, declared invalid by a state tribunal authorized to make such determination, or called into
22 question by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S.
23 477, 486-487 (1994).

24 The Ninth Circuit has extended *Heck* beyond the context of convictions to hold that it
25 applies to claims challenging the validity of an arrest, prosecution or conviction, such as those
26 plaintiff presents here. *See, e.g., Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006) (*Heck*
27 barred plaintiff's claims of wrongful arrest, malicious prosecution and conspiracy among police
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1 officers to bring false charges). However, in *Wallace v. Kato*, 549 U.S. 384, 393 (2007), the
2 United States Supreme Court held that the “*Heck* rule for deferred accrual is called into play only
3 when there exists ‘a conviction or sentence that has not been . . . invalidated,’ that is to say, an
4 ‘outstanding criminal judgment.’” *Id.* at 393 (quoting *Heck*, 512 U.S. at 486-87). The Court
5 stated that the contention that “an action which would impugn *an anticipated future conviction*
6 cannot be brought until that conviction occurs and is set aside” goes “well beyond *Heck*” and
7 rejected it. *Id.* at 393 (italics in original). Although the Court was only considering when the
8 statute of limitations began running on a false arrest/false imprisonment claim, the discussion
9 quoted above means that *Heck* does not apply if plaintiff has only been arrested or charged, not
10 convicted, which is the case here.

11 In *Wallace* the Court said that if a plaintiff files a § 1983 false arrest claim before he or
12 she is convicted, or files any other claim related to rulings that likely will be made in a pending
13 or anticipated criminal trial, it is within the power, and accords with common practice, to stay
14 the civil action until the criminal case or the likelihood of a criminal case is ended. *Id.* If the
15 plaintiff is then convicted, and if the stayed civil suit would impugn that conviction, *Heck*
16 requires dismissal; otherwise, the case may proceed. *Id.*

17 Here, it appears that Plaintiff’s criminal proceedings are ongoing. Because Plaintiff has
18 not yet been convicted and state proceedings have not concluded, the Court finds that a stay is
19 warranted in this action. This case is STAYED pending resolution of the criminal charges
20 against Plaintiff. If Plaintiff desires to continue with this case after disposition of the criminal
21 charges against him, he must request that the stay be lifted **within thirty days** of disposition of
22 the criminal charges or **within thirty days** of the filing date of this order - whichever is earliest -
23 unless an appeal is filed. If he appeals, any request to lift the stay must be filed **within thirty**
24 **days** of completion of the appellate process. Failure to comply with these deadlines may result
25 in the dismissal of this action.

26 If the stay is lifted, and the Court finds Plaintiff’s claims would impugn the validity of his
27 conviction, the action will be dismissed under *Heck*; if no such finding is made, the action will
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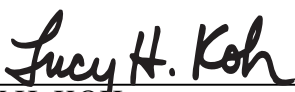
1 proceed at that time, absent some other bar to suit. *See Wallace*, 549 U.S. at 394. Leave to
2 proceed in forma pauperis is GRANTED. The Clerk of the Court is hereby directed to
3 ADMINISTRATIVELY CLOSE the case.

4 **CONCLUSION**

5 For the foregoing reasons, this action is hereby STAYED. The Clerk of the Court shall
6 administratively close the case until further order from the Court.

7 IT IS SO ORDERED.

8 DATED: 8/30/2010


9 LUCY H. KOH
United States District Judge